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|--|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/792,256   | 03/02/2004  | Edward A. Schroppel  | 3102.022            | 3969             |
| 26375 7590 03/25/2008<br>SINSHEIMER JUHNKE LEBENS & MCIVOR, LLP<br>1010 PEACH STREET<br>P.O. BOX 31<br>SAN LUIS OBISPO, CA 93406 |             |                      | EXAMINER            |                  |
|  |             |                      | GETZOW, SCOTT M     |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3762                |                  |
|  |             |                      | MAIL DATE           | DELIVERY MODE    |
|  |             |                      | 03/25/2008          | PAPER            |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |
|------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/792,256 | <b>Applicant(s)</b><br>SCHROEPPEL ET AL. |
|                              | <b>Examiner</b><br>/Scott M. Getzow/ | <b>Art Unit</b><br>3762                  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on **24 December 2007**.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) **1-10,19,21,22,24,25,27-35 and 37-43** is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) **1-10,19,21,22,24,25,27-35 and 37-43** is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 2/28/08
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

***Double Patenting***

1. Claims 1-10,19,21,22,24,25,27-35,37-43 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,738,663 in view of Herbst et al (6,021,347). To have a catheter which can supply drugs to the tumor site, as shown by Herbst, would have been obvious since it has been shown that electrical therapy and drug therapy when combined are effective treatments for cancerous tumors.
2. Claims 1-10,19,21,22,24,25,27-35,37-43 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,366,808 in view of Herbst et al (6,021,347). See rejection supra.

***Claim Rejections - 35 USC § 103***

3. Claims 1-10,19,21,22,24,25,32,33,34,35,37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbst et al (6,021,347).

The catheter, as set forth in amended claim 1, is considered to be obvious over/analogous to the electrode structure 23 of Herbst since the structure is used to transport drugs to the tissue site, as does a catheter. As mentioned in the previous office action, the device of Herbst is considered to be able to perform all of the intended uses set forth in the above claims. Further, re claim 10, it is well known to have programmability in medical devices so that more stimulation procedures can be used.

4. Claims 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herbst et al (6,021,347) in view of Slovak (5,058,605).

5. To use DC pulses, as set forth in Slovak, would have been obvious since such are known to be used in the field for treatment of various patient's ailments.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Scott M. Getzow/ whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/  
Primary Examiner  
Art Unit 3762

SMG

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